IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5510 OF 2006

M/s. Sujay Chemicals & ors..... Petitioner

versus

M/s. Pecific Organics Pvt. Ltd..... Respondent.

Shri S.D.Patil for the petitioner.
Shri P.S.Dani with Mrs. Sharvari Shailendra for the respdt.

CORAM; A.P. DESHPANDE, J.
DATED; 7TH JUNE, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Writ mpetition heard finally by consent of parties.

2. The respondent no.1 filed a summary suit under Order 37 of the Code of Civil Procedure against the present petitioners. The suit came to be decreed ex-parte. On coming to know that an ex-parte decree has been passed, the petitioners filed an application under Order 9 Rule 13 of CPC for setting aside the ex-parte decree. There is a delay of 10 days in filing of the application for setting aside the ex-parte decree and as such the petitioner filed Misc. Application bearing no.37/06 in the Court of Civil Judge Senior Division, Kalyan seeking condonation of

delay. Rejection of this application for condonation of delay has given raise to the filing of the present petition.

3. It is undisputed that there was a delay of only 10 days in filing of the application under Order 9 Rule 13 for setting aside the ex-parte decree dated 6-8-2002. The reason set out for explaining the delay was that the petitioner received the summons in Execution Proceeding No. 5/03 only on 23-10-2005. It is stated that immediately after the winter vacation the petitioner/applicant approached the court at Kalyan for certified copy of the ex-parte decree at which point of time he came to know that the record of the suit has been sent to District Court, Thane. On enquiries being made at Thane, it was learnt that the record had not reached at Thane court. It is then averred that application for certified copy of the decree was not accepted either at the Court at Thane or Kalyan. The certified copy was ultimately received on 8-8-2006. Taking support from the averments it was contended that the delay was neither intentional nor deliberate. It is the case of the present petitioner that they were not served with the suit summons and hence did not appear. A decree in the sum of Rs. more than 7 lacs has been passed. It is a settled position that while considering the application for

condonation of delay, courts need to take pragmatic view of the matter than taking a pedautic approach. The delay is hardly of 10 days for which explanation tendered has been rejected, by touching the merit of the application under Order 9 Rule 13.

4. In my view delay of ten days has been properly explained. All other issues, such as maintainability of application under Order 9 Rule 13, are left open to be considered at the appropriate stage. Interest of justice would be met if the writ petition is allowed.

4. The impugned order disposes all three applications at Exh.4,5 and 11. Exh. 5 is an application for interim injunction to stay the execution of the exparte decree . Exh. 4 is for condonation of delay. Exh.11 is the application filed by the present respondent/plaintiff objecting to the maintainability of the application moved by the petitioner for condonation of delay, on the ground that such a application cannot be filed by the petitioner, it being an unregistered partnership firm, in view of the provisions of section 69 of the Partnership Act. I am setting aside the order refusing to condone the delay and also the order passed by the trial court rejecting the prayer for injunction. Thus writ petition is allowed,. Impugned orders below Exh.4 and 5 are

quashed and aside aside. Petitioner is granted liberty to file a fresh application for injunction before the trial court.

6. Ad-interim order is operating and the same shall continue to operate for two weeks more from today.

Rule made absolute in above terms.

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